

Letter Ruling 9347008

August 16, 1993

Uniform Issue List Information:

0105.00-00

Accident and health plans

0106.00-00

Contribution by employer to accident and health plans

UIL No. 105.00-00 Accident and health plans; UIL No.  
106.00-00 Contribution by employer to accident and health  
plans

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

[ Code Secs. 105 and 106]

TEXT: ISSUE

Whether, under the facts presented, reimbursements for Medicare Part B premiums paid to Taxpayer by Company are excludable from his gross income under sections 106 or 105(b) of the Internal Revenue Code.

FACTS

Taxpayer retired from the Company in 1969. In conjunction with Company's health care benefits program for retired employees, Company makes payments directly to its retired employees to reimburse them for the supplementary medical insurance premiums (Medicare Part B). Company has emphasized to the retirees the importance of using these reimbursements for their intended purpose because the Company's health care benefits program coordinates with Medicare. However, due to the large number of individuals involved, Company does not require that the retiree verify enrollment in Medicare Part B, nor does it require that the retiree verify payment of the Medicare Part B premiums. The Taxpayer included the reimbursements in gross income and filed a timely claim for refund which was fully disallowed.

APPLICABLE LAW AND RATIONALE

Section 61(a) of the Code and the Income Tax Regulations under that section provide that, unless otherwise excluded by law, gross income means all income from whatever source derived, including retired pay of employees, pensions and retirement allowances.

Section 106 of the Code provides that gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1 of the regulations provides that the employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund which provides accident or health benefits directly or through insurance to one or more of his employees.

The exclusion of section 106 of the Code applies to amounts paid for the benefit of retired employees as well as active employees. Rev. Rul. 62-199, 1962-2 C.B. 38.

Rev. Rul. 67-360, 1967-2 C.B. 71, holds that the exclusion provided by section 106 of the Code applies to amounts paid by an employer as premiums for supplementary medical insurance (Medicare) for his employees. In so holding, that revenue ruling states: "See Revenue Ruling 61-146, C.B. 1961-2, 25, relating to amounts paid by an employer as his share of premiums for hospital and medical insurance for his employees."

In Rev. Rul. 61-146, 1961-2 C.B. 25, the Service considered a situation where an employer pays a share of the premiums for hospital and medical insurance for his employees who are not covered by the employer's group policy but have other types of hospital and medical insurance for which the employees pay the premiums directly to the insurers. Under the facts of that revenue ruling, the employer paid a part of the premiums upon proof that the insurance was in force and was being paid for by the employees. To facilitate payment of his share of the premiums paid directly by the employees to the insurers, the employer used the following methods:

(1) reimbursed each employee directly once or twice a year for the employer's share of the insurance premiums upon proof of prior payment of the premiums by the employee;

(2) issued to each employee a check payable to the particular employee's insurance company, the employee being obligated to turn over the check to the insurance company; or

(3) issued a check as in method (2), except the check was made payable jointly to the insurance company and the employee.

The Service noted that under methods (2) and (3), the employees were obligated to turn the checks over to the insurer and thereby could in no event divert the payments to other uses. Accordingly, it was held that the amounts paid by the employer under these two methods constituted employer payments of premiums on policies of accident or health insurance covering one or more employees and were excludable from the gross income of the employees under section 106 of the Code. Concerning method (1), the Service noted that although that method involves direct payment to the employee, in practical effect it does not differ from methods (2) and (3), since proof is required by the employer that the insurance is in force for the employee and that premiums for the period involved had been paid by the employee and because the employer's payment is stated to be in reimbursement for the employer's share of the insurance premiums. The Service held, therefore, that the payments made under method (1) constitute employer payments of accident and health insurance for employees pursuant to section 106 of the Code if the payments are shown to be in reimbursement of premiums actually paid by the employees to the insurer.

In Rev. Rul. 61-146, the Service distinguished the facts in that revenue ruling from those in Rev. Rul. 57-33, 1957-1 C.B. 303. Under the facts in Rev. Rul. 57-33, the employers had no accident or health plan of their own in effect and, with respect to the payments which they made directly to the employees as reimbursement of health and accident insurance premiums, did not require an accounting that the funds were actually expended in the acquisition of the insurance coverage. The Service held there that the payments were includible in the gross income of the employees under section 61 of the Code.

Thus, the holding of Rev. Rul. 61-146, that direct payments made by an employer to employees in reimbursement of health and accident insurance premiums may be excludable from the recipient's gross income under section 106 of the Code, applies only to situations where the employer requires an accounting, or other safeguards are provided, to insure that the funds are actually expended in the acquisition of the insurance coverage.

As stated in the Taxpayer's submissions, the retirees of Company receive the payments for Medicare Part B premiums without any restrictions on their use. Company does not attempt to verify whether the funds are actually expended in the

acquisition of the Medicare coverage. Accordingly, payments made by Company directly to retirees to cover their Medicare Part B premiums are not excludable from their gross incomes under section 106 of the Code.

The Taxpayer argues in the alternative that if the payments received by retirees of the Company for Medicare Part B premiums are not excludable from gross income under section 106 of the Code, those payments are excludable under section 105(b) of the Code.

Section 105(b) of the Code provides that gross income does not include amounts received by an employee through employer-provided accident and health insurance if such amounts are paid to reimburse the taxpayer for expenses incurred by him for the medical care of the taxpayer, his spouse, and his dependents.

Section 213(d)(1)(C) of the Code provides that the term "medical care" includes amounts paid for accident and health insurance.

Section 1.105-2 of the regulations provides that section 105(b) applies only to amounts which are paid specifically to reimburse the taxpayer for expenses incurred by him for the prescribed medical care. Thus, section 105(b) does not apply to amounts which the taxpayer would be entitled to receive irrespective of whether or not he incurs expenses for medical care. For example, the regulations state that if, under a wage continuation plan, the taxpayer is entitled to regular wages during a period of absence from work due to sickness or injury, amounts received under such a plan are not excludable from his gross income under section 105(b) even though the taxpayer may have incurred medical expenses during the period of illness.

In the instant case, retirees are entitled to receive the payments under the Company's health care benefits program whether or not they incur expenses for Medicare Part B premiums. Accordingly, like the payments under the wage continuation plan described in section 1.105-2 of the regulations, the payments are not excludable from the retirees' gross incomes under section 105(b) of the Code.

#### CONCLUSION

Amounts paid to the Taxpayer to reimburse him for Medicare Part B premiums under Company's health care benefits program for retirees are not excludable from his gross income under sections 106 or 105(b) of the Code.

Except as specifically stated above, no opinion is expressed as to the application of any provision of the Code to the Company's health care benefits program.

A copy of this technical advice memorandum is to be given to the Taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.